

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE No. 04-239

CASE NO. SC05-851

JUDGE RICHARD H. ALBRITTON, JR.

MOTION TO STAY

COMES NOW, Respondent, JUDGE RICHARD H. ALBRITTON, JR., by and through his undersigned counsel, and files this Motion to Stay the scheduling of the Judge's deposition in this case and as grounds therefore would show:

1. Respondent has previously made demand for discovery materials from Special Counsel to the Judicial Qualifications Commission (hereinafter JQC) under Rule 12(b) of the Florida Judicial Qualifications Commission's Rules.

2. Special Counsel to the JQC has refused to comply with the Judge's Rule 12(b) demands. Specifically, Special Counsel has refused to disclose witness summaries that were submitted to the Investigative Panel for its consideration of whether there was probable cause to support the formal charges.

3. As a result thereof, Respondent has filed a Motion to Compel with the Chair of the Hearing Panel which has been denied. Respondent's Petition for Review by the full Hearing Panel filed pursuant to Rule 7(b) was also denied on March 14, 2006.

4. Respondent also filed a Motion to Stay requesting the Hearing Panel to stay the deposition of Judge Albritton until his Motion to Compel was heard. The Hearing Panel Chair granted Judge Albritton's Motion to Stay until the full Hearing Panel ruled on the Petition for Review.

5. Respondent is filing a Petition for Writ of Mandamus, or in the Alternative, Motion to Compel Special Counsel to Produce Documents Reviewed by the Investigative Panel in Finding Probable Cause with the Florida Supreme Court, contemporaneously with this Motion to Stay. Respondent's Petition requests the Court to order Special Counsel to comply with Florida Judicial Qualifications Commission Rule 12(b).

6. Special Counsel has repeatedly attempted to depose Judge Albritton prior to disclosing the witness summaries that were submitted to the Investigative Panel for use in its determination as to whether probable cause existed to support the formal charges filed in this matter.

7. The JQC is attempting to force Judge Albritton to submit to a deposition without the opportunity to review the evidence against him. It is respectfully submitted that such a procedure does not lead to the ultimate goal of discovering the truth. The Amended Formal Charges in this matter contain thirty-six separate charges, most of which fail to provide any detailed information, such as the party's name or the date the alleged incident occurred, which would enable

the Judge to adequately and competently respond to the JQC's questions. Judge Albritton has presided over thousands of cases a year, rendering his ability to recall any one particular incident virtually impossible without the benefit of refreshing his recollection. The JQC's determination to set the deposition without the ability to review the allegations in question suggests the JQC's attempt to "trick" the deponent rather than conducting a fair investigation into the issues.

8. Without the requested documents to which Respondent is entitled, counsel for Respondent and Respondent cannot properly prepare for the deposition since they have been precluded from reviewing the evidence considered by the Investigative Panel in finding probable cause.

WHEREFORE, and by reason of the foregoing, Respondent respectfully requests the Court to enter an order staying the taking of Judge Albritton's deposition until such time as the Florida Supreme Court enters its order on the pending Petition for Writ of Mandamus, or in the Alternative, Motion to Compel Special Counsel to Produce Documents Reviewed by the Investigative Panel in Finding Probable Cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2006, the original of the foregoing Motion to Stay has been filed via e-file@flcourts.org and furnished by FedEx overnight delivery to:

Honorable Thomas D. Hall
Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

with copies by U. S. Mail to:

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Executive Director
Florida Judicial Qualifications Commission
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Judge James R. Wolf
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